

Introduced by Senator Aanestad

February 17, 2010

An act to amend Section 809.3 of, and to add Section 809.04 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1094, as introduced, Aanestad. Healing arts: peer review.

Existing law provides for the professional review of specified healing arts licentiates through a peer review process conducted by peer review bodies, as defined. Existing law requires the governing body of acute care hospitals to give great weight to the actions of peer review bodies and authorizes the governing body to direct the peer review body to investigate in specified instances. Where the peer review body fails to take action in response to that direction, existing law authorizes the governing body to take action against a licentiate.

This bill would prohibit a member of a medical or professional staff from being required to alter or surrender staff privileges, status, or membership solely due to the termination of a contract between that member and a health care facility.

Existing law provides various due process rights for licentiates who are the subject of a final proposed disciplinary action of a peer review body, including authorizing a licensee to request a hearing concerning that action. Existing law gives parties at the hearing certain rights, including the right to present and rebut evidence. Existing law requires the peer review body to adopt written provisions governing whether a licensee may be represented by an attorney and prohibits a peer review body from being represented by an attorney where a licensee is not so represented, except as specified.

This bill would give both parties the right to be represented by an attorney, regardless of whether one of the parties declines that representation.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 809.04 is added to the Business and
2 Professions Code, to read:

3 809.04. (a) To ensure that the peer review process is not
4 circumvented, a member of a medical or professional staff, by
5 contract or otherwise, shall not be required to alter or surrender
6 staff privileges, status, or membership solely due to the termination
7 of a contract between that member and a health care facility.

8 (b) This section shall not impair a governing body's ability to
9 take action against a licentiate pursuant to Section 809.05.

10 SEC. 2. Section 809.3 of the Business and Professions Code
11 is amended to read:

12 809.3. (a) During a hearing concerning a final proposed action
13 for which reporting is required to be filed under Section 805, both
14 parties shall have all of the following rights:

15 (1) To be provided with all of the information made available
16 to the trier of fact.

17 (2) To have a record made of the proceedings, copies of which
18 may be obtained by the licentiate upon payment of any reasonable
19 charges associated with the preparation thereof.

20 (3) To call, examine, and cross-examine witnesses.

21 (4) To present and rebut evidence determined by the arbitrator
22 or presiding officer to be relevant.

23 (5) To submit a written statement at the close of the hearing.

24 (6) *To be represented by an attorney of the party's choice at*
25 *the party's expense regardless of whether the other party declines*
26 *that representation.*

27 (b) The burden of presenting evidence and proof during the
28 hearing shall be as follows:

29 (1) The peer review body shall have the initial duty to present
30 evidence ~~which~~ *that* supports the charge or recommended action.

31 (2) Initial applicants shall bear the burden of persuading the
32 trier of fact by a preponderance of the evidence of their

1 qualifications by producing information ~~which~~ *that* allows for
2 adequate evaluation and resolution of reasonable doubts concerning
3 their current qualifications for staff privileges, membership, or
4 employment. Initial applicants shall not be permitted to introduce
5 information not produced upon request of the peer review body
6 during the application process, unless the initial applicant
7 establishes that the information could not have been produced
8 previously in the exercise of reasonable diligence.

9 (3) Except as provided above for initial applicants, the peer
10 review body shall bear the burden of persuading the trier of fact
11 by a preponderance of the evidence that the action or
12 recommendation is reasonable and warranted.

13 ~~(e) The peer review body shall adopt written provisions~~
14 ~~governing whether a licentiate shall have the option of being~~
15 ~~represented by an attorney at the licentiate's expense. No peer~~
16 ~~review body shall be represented by an attorney if the licentiate is~~
17 ~~not so represented, except dental professional society peer review~~
18 ~~bodies may be represented by an attorney provided that the peer~~
19 ~~review body grants each licentiate the option of being represented~~
20 ~~by an attorney at the licentiate's expense, even if the licentiate~~
21 ~~declines to be represented by an attorney.~~